Supreme Court, U.S.
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No. 01-23

In The

Supreme Court of the United States

ROYAL CARIBBEAN CRUISES, LTD.,

Petitioner,

v.

CLAUDIA DUARTE,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal, Third District Of Florida

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Petitioner respectfully informs the Court that the information required pursuant to Supreme Court Rule 29.6 is provided in the Petition for a Writ of Certiorari, and no amendments are necessary at this time.

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Because Respondent Claudia Duarte ("Duarte") has raised new issues in the brief in opposition to Petitioner Royal Caribbean Cruises, Ltd.'s ("RCCL") Petition for Writ of Certiorari, RCCL files this Reply brief pursuant to Supreme Court Rule 15.6.

A. Duarte's "INS" Argument Has No Merit

Duarte's argument that RCCL had a contractual obligation to provide her with maintenance and cure based on Immigration and Naturalization ("INS") documents signed by RCCL is nothing but a red herring meant to distract this Court from the pertinent issue, which is whether a former seaman who is no longer under contract with the shipping company can still be rendered "in the service of a ship" simply by virtue of receiving maintenance and cure for an unrelated injury.

The INS argument was flat-out rejected by the trial court and Florida's Third District Court of Appeal, and should be rejected as well by this Court. When Duarte was diagnosed with thyroid cancer, in order to legally discharge her from the ship for treatment in the United States RCCL signed a series of INS forms that allowed her to remain in the United States while she was receiving medical treatment. (R. 151-63).[1] Each INS form that RCCL

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[1] "R" refers to the record on appeal in the Florida Third District Court of Appeal. "Rsp." refers to Respondent Duarte's brief in opposition filed with this Court, and "App." refers to the appendix to the petition for a writ of certiorari.

signed listed the specific medical condition on which Duarte's leave was based. There was never any record support for Duarte's contentions that the INS's authorization for Duarte to be discharged from the vessel was based on any alleged payment guarantee by RCCL, that the INS form submitted by RCCL meant that RCCL was responsible for paying for all of Duarte's medical expenses, or that RCCL "admits" that its guarantee of payment was not limited to those injuries or illnesses listed on the forms. (Rsp. p. 2). In fact, the record indicates the contrary. Depositions taken of Rafael Lopez, the agent hired by RCCL to complete and submit Duarte's immigration forms, and Clara Gam, RCCL's risk management employee and assistant to crew medical coordinators, did not in any way indicate that the immigration forms served as guarantees by RCCL to pay for medical expenses arising out of injuries not incident to or incurred during Duarte's employment with RCCL. (R. 186; 205).

There was also never any showing below to support Duarte's allegation that "RCCL chose to meet its duty to provide Duarte with maintenance and cure by having her receive medical treatment in Miami" rather than on board the ship or in Columbia. (Resp. p. 1). In fact, Duarte's attorney specifically contacted RCCL and demanded that RCCL arrange to have Duarte remain in Miami for medical treatment.

B. This Court Should Not Deny Review Simply Because The Third District Was The First To Improperly Expand This Court's Precedent.

Duarte argues against this Court's granting of certiorari by asserting that because this case involves an alleged issue of first impression, it is not "important" enough for this Court to decide. (Rsp. pp. 7-10). The reason there is no holding similar to the instant case is because before the Third District's opinion, all other lower courts had followed this Court's established law holding that an injured seaman is in the service of a ship *only* if she is answerable to the call of duty and had a substantial connection to a vessel in navigation at the time of the injury-causing accident. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995); *Farrell v. United States*, 336 U.S. 511, 516 (1949).

Duarte's assertion that the question at issue has not arisen in 178 years of maintenance and cure jurisprudence and is thus insignificant relies on a deceptively narrow characterization of the issue. This Court has addressed the outer parameters of what constitutes a "seaman" numerous times, and in the process has considered the "unusual" factual situations of each case, as they often indicate a need by this Court to refine the legal definition of a seaman. *See, e.g., Aguilar v. Standard Oil Co. of N.J.*, 318 U.S. 724, 726 (1943) (holding that crew members injured while returning to their moored ships were "seamen" who were "in the service of the ship," and were thus entitled to maintenance and cure); *Farrell v. United States*, 336 U.S. 511, 516 (1949) (holding that a seaman "in the service of the ship" is generally answerable to the ship's call of duty); *Warren v. United States*, 340 U.S. 523,

529 (1951) (holding that "seaman" status extended to seaman who broke his leg visiting a dance hall while on "shore leave"); *Braen v. Pfeifer Oil Transp. Co.*, 361 U.S. 129 (1959) (holding that mate doing carpentry work on a raft in his employer's repair yard was "seaman" who was "in the service of the ship" at time he was injured because he was working pursuant to his employer's orders); *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991) (holding that a paint foreman employed on an oil drilling platform in Persian Gulf was "seaman," because seaman status involves any "employment-related connection to a vessel in navigation"); *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995) (refining meaning of being "in the service of a ship" as requiring that at the time she sustained her injury the claimant had a permanent or substantial connection to a vessel or fleet, performed work that contributed to the function of the vessel, was an employee of the ship or shipping company, and spent the majority of her time on a particular vessel or fleet).

The question at issue in the instant case is no less important than those addressed in the above-cited cases: Whether "seaman" status extends to a former crew member who is no longer employed by the shipowner and whose only tie to the shipowner is her receipt of maintenance and cure for a prior, unrelated illness. The fact that Florida's Third District is the first court to improperly expand this Court's doctrine does not mean that the pertinent issue is not important or does not create a conflict with this Court's precedent in admiralty law, thus creating a need for certiorari review.

C. The Third District's Opinion Conflicts With Decisions Of This Court.

Although RCCL strenuously disagrees with Duarte's argument on pages 10 through 16 that this case does not conflict with decision of this Court, Duarte does not raise any new issues in this regard. Thus, in compliance with Rule 15.6 of this Court's Rules of Procedure, RCCL will not reply to this portion of the argument but will refer to pages 7 through 17 of its Petition, which thoroughly discusses how the *Duarte* decision below has departed from this Court's established precedent and has improperly expanded the obligation of shipowners.

Duarte does raise a new and totally incorrect issue, however, in regard to the status of her expired employment contract. As explained above, RCCL never had any statutory or contractual duty to pay the expenses arising out of injuries Duarte allegedly sustained in the automobile accident that occurred months after her employment with RCCL had terminated. Although Duarte contended below that the Immigration and Nationality Act ("INA") (Title 8, U.S.C.A.) and the Code of Federal Regulations impose a duty upon a vessel owner to pay all medical expenses of medically paroled seamen, this is not supported by the plain language of the statutory provisions. The INA and Code of Federal Regulations, which set out the procedures related to the entry of aliens into the United States, have no application to substantive maritime law, do not purport to extend substantive maritime law, and have absolutely no application to these facts. Thus, both the trial and appellate court outright rejected this novel argument raised by Duarte.

Additionally, Duarte relies upon different INA provisions than what she relied upon in the trial court. For instance, although Duarte discusses a shipowner's alleged requirement to file an INS Form I-408, in the trial court Duarte exclusively relied upon Form I-510 and the related Code provision, 8 C.F.R. § 253.1(a) ("The guarantee of payment for medical and other related expenses required by section 253 of the Act shall be executed by the owner, agent, consignee, commanding officer or master on Form I-510."). There is nothing in the record to even suggest that Form I-408 or 8 C.F.R. § 252.1(h) have the slightest relationship to this case.

Duarte also incorrectly relies on 8 U.S.C.A. § 1286 by contending that it prohibits [redacted] ing" an alien seaman [redacted] that therefore RCCL [redacted] Duarte was no longer employed with an RCCL vessel. (Rsp. p. 17). This argument was not raised in the trial court and was therefore waived for appellate review under Florida law. *See Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985) ("In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.").

In addition to the fact that this point is waived, it has no merit. The record below showed that in accordance with 8 U.S.C.A. § 1283 [redacted] RCCL properly complied with [redacted] by submitting a new INS [redacted]

twenty-nine days. (R. 151-63). This was not a situation contemplated by section 1286 and *United States v. Seaboard Surety Co.*, 239 F.2d 667 (4th Cir. 1957), cited by Duarte (Rsp. p. 17), where the vessel owners were subjected to statutory fines after they improperly released their alien crew members in United States ports without any notification or compliance with immigration laws. The cases and provisions to which Duarte cites involve the improper release of alien seamen into the United States, and not the employment of seamen.

Hopson v. Texaco, 383 U.S. 262 (1966), discussed by Duarte (Rsp. pp. 17-19), also does not support her argument. The two crew members in *Hopson* were injured and killed while in the process of being taken by taxi cab, at the direction of the ship, to the United States Consul – a legal prerequisite to their discharge from the ship – after they fell ill in a foreign port. As this Court noted, "[t]he ship could not sail with these two men, nor could it lawfully discharge them without taking them to the United States Consul." *Id.* at 264; *see also Vincent v. Harvey Well Serv.*, 441 F. 2d 146, 148 n.7 (5th Cir. 1971) (noting that employees in *Hopson* were injured *while* employer was perfecting statutory duty); *Williamson v. Western-Pacific Dredging Corp.*, 304 F. Supp. 509, 516 (D. Or. 1969) (noting that vessel owner in *Hopson* actually controlled seamen's method of travel). In contrast, there was never an inference in the record that RCCL was in the process of satisfying a legal obligation or in any way controlled Duarte's method of travel when Duarte was injured in the automobile accident.

Duarte's alternate claim that she could not be found to have been discharged from RCCL's employment

because RCCL did not file her expired employment contract with the trial court is also a red herring that was raised for the first time at the appellate level. Significantly, Duarte does not contest RCCL's assertion on page 20 of the Petition that Duarte's non-employment status was not disputed in the trial court. (Rsp. p. 19). Rather, she asserts that RCCL nonetheless had the affirmative obligation to provide proof of her non-employment (which would have required proof of a negative), even though Duarte never raised it as a fact issue below. This makes no sense, as a party has no obligation to introduce a contract to prove the nonexistence of one. In fact, "the burden of proof is on the seaman to establish the employment relationship." *See Wheatley v. Gladden*, 660 F.2d 1024, 1026 (4th Cir. 1981). Additionally, RCCL did show that Duarte's last employment contract had expired at the time of the car accident by filing a sworn interrogatory with the trial court stating that Duarte's last employment contract expired in March of 1997. (R. 84). Duarte never contested that attestation, either through affidavits or during the hearing on RCCL's summary judgment motion. (App. 5-19; 42-45).

Duarte's assertion that the duty to provide maintenance and cure is not based on the seaman's contract or articles is patently incorrect. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995) (in order to be considered a seaman in the service of the ship under maritime law, it is necessary that at the time she sustained her injury the claimant was an employee of the ship or shipping company). The cases Duarte cites in alleged support of this contention show that the narrow exception to the employment requirement – arising when a crew member

is departing from or on her way to a vessel – have no application to these facts. For instance, in *Hunt v. The Trawler Brighton, Inc.*, 102 F. Supp. 300 (D. Mass. 1952), cited by Duarte (Rsp. p. 20), where the claimant broke his leg after leaving the fishing boat on which he was working, the record indicated that the claimant was still employed with the boat while he was on shore. The claimant's employer's fishing vessels would remain tied up at the dock for forty-eight hours after each trip, and the fishermen would show back up at the boat at the end of that period. Although there were no separate contracts for each trip, there was no evidence that the claimant had terminated his employment with the boat. In fact, after he injured himself the claimant asked someone to notify the captain of the vessel that he would be unable to report for the next trip. Also, the vessel's captain could have called upon the claimant to perform work such as mending nets during the period between trips. In contrast, in December of 1997, Duarte had not worked aboard a vessel for close to a year, and had no obligation to report back to work on a ship.

LeBlanc v. B.G.T. Corp., 992 F.2d 394 (1st Cir. 1993), cited by Duarte (Rsp. p. 20), also has no application to this case, as the claimant in *LeBlanc* was injured while leaving the ship immediately after he was fired from its employment. Noting that the right to maintenance and cure arises where an injury occurs "amidst circumstances endured in furtherance of, and as a result of, an employment, the duties of which help accomplish the mission of a vessel in navigation," the court agreed that the obligation attaches to "accidents which happen in the brief

interval between the time a seaman is paid off and formally discharged and the subsequent time at which, in ordinary course, he actually gets physically away from her." *Id.* at 399. Duarte was not leaving the ship when she was injured, and thus does not fit under the exception in *LeBlanc*.

Reed v. Canfield, 20 F. Cas. 426 (D. Mass. 1832), cited by Duarte (Rsp. p. 20), also does not apply. In *Reed*, the claimant had disembarked from his anchored ship for a few hours and was injured while returning to the vessel in a smaller boat. Additionally, as Duarte notes, when the seaman was injured he had not yet been discharged from the ship.

CONCLUSION

Based on the facts and authorities set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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